

ScentAir Technologies, Inc. v. Prolitec, Inc., Final Written Decision IPR2013-00180

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Takeaway: The proper question regarding teaching away and obviousness is not whether the prior art teaches away from the invention, but whether the prior art teaches away from a combination with the other prior art.

In its [Final Written Decision](#), the Board found that all challenged claims of the '068 Patent (claims 1, 3-5, 9-13, 15, 22-24, 26, 28, and 33) are unpatentable. The '068 Patent is directed to a method and system of controlling operation of a diffusion appliance to treat the atmosphere within an enclosed space. Specifically, the '068 Patent discloses controlling a diffusion appliance according to a plurality of control schemes, each of which defines the timing of operation of the appliance and the flow rate of the liquid to be diffused into a space.

The Board began with claim construction, stating that it must give the terms the broadest reasonable interpretation in light of the specification. The Board adopted its construction of “venturi,” “means of diffusing,” and “diffusion means” from the Decision to Institute. The Board then reviewed the meaning of the term “a plurality of control schemes.” The Board, declining to adopt either of the parties’ constructions, reviewed the claims and dictionary definitions to interpret “a plurality of control schemes” to mean “a system of correlations between particular inputs (e.g., characteristics of the liquid and level of treatment) and particular outputs for controlling the diffusion means (e.g., flow rate, periodic timing).”

The Board then examined the challenge to the claims as obvious over Le Pesant, focusing on whether Le Pesant teaches “control schemes” and whether a person of ordinary skill in the art would have found it obvious to modify Le Pesant to select a control scheme based on the volume of the space to be treated. The Board found that Le Pesant discloses control schemes as the term has been construed, finding that Patent Owner’s arguments to the contrary were not persuasive because they did not account for the broadest reasonable construction. However, the Board found that Petitioner had not shown that Le Pesant would have suggested to one of ordinary skill in the art selecting a control scheme based on volume of the space to be treated, noting Petitioner’s expert’s statement that “common sense” would dictate disclosure of the limitation.

The Board then turned to the challenge to the claims as obvious over Le Pesant in combination with Privas. Specifically, Patent Owner argued that the disclosures do not teach control schemes or

selecting a control scheme based on the volume of the space to be treated, and that it would not have been obvious to combine Le Pesant and Privas because Privas is nonanalogous art and teaches away from the claimed invention. Regarding Patent Owner's first argument, the Board noted its prior finding the Le Pesant discloses control schemes. The Board also found that the claims do not require a selection of control scheme based exclusively on volume or an "equivalent" of volume, as suggested by Patent Owner, and Privas teaches selecting a control scheme as required by the claims. Finally, the Board found that there was sufficient reason to combine Le Pesant with Privas, that Privas is analogous art because it is from the "same field of endeavor" as the '068 Patent, and that Privas does not teach away from the combination with Le Pesant. Therefore, all of the challenged claims are unpatentable as obvious over Le Pesant in view of Privas.

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Paper 47: Final Written Decision

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Patent 7,930,068

Before: Jameson Lee, Michael J. Fitzpatrick, and Christopher L. Crumbley

Written by: Crumbley

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